

**BENEFITS AVAILABLE U/S 80-IA (4)(iii) OF THE I.T. ACT,
IN RESPECT OF AN INDUSTRIAL PARK.**

[Provisions of the Industrial Park Scheme 2002, explained in detail]

- By S.K. Tyagi

Section 80-IA of the I.T. Act, 1961, grants deductions in respect of profits and gains from Industrial Undertaking or enterprises engaged in Infrastructure Development, etc. As per section 80-IA (1), where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in section 80-IA (4), there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of profits and gains derived from such business for ten consecutive assessment years.

As per section 80-IA(4)(iii), the provisions of section 80-IA, apply to any undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on 1.4. 1997 and ending on the 31.3. 2006.

Recently, I was approached by an assessee, for an opinion regarding the tax-treatment to be given to income from an Industrial Park, being developed by it, in the light of the provisions of S.80-IA(4)(iii) of the IT Act, 1961 (the Act). A number of queries were referred in this connection for my opinion. The aforesaid queries were to be answered in the light of **Industrial Park Scheme, 2002, Form IPS-I and Form IPS-II**. As the Industrial Park Scheme, 2002 (IPS-2002, for short) is very recent, no precedents are available for answering the queries raised by the assessee.

In order to answer the aforesaid queries, I had to examine, in detail, the relevant provisions of the IT Act, IT Rules, IPS-2002, Circulars of the CBDT, other connected statutes and various legal precedents.

As there were a number of queries raised by the assessee, which also involved certain facts prevailing in the case of the assessee-undertaking (AU, for short), the summary of the letter received from the querist, is furnished, as follows:

We are developing an Industrial Park / Software Park and in this regard, we have already received the approval from the Ministry of Commerce & Industry, under the Industrial Park Scheme, 2002, where we are eligible for deduction U/S 80-IA(4)(iii) of the IT Act, 1961.

The following queries are to be answered, in respect of the Income-tax deduction, under this Scheme:

- (A) In case **AU** sells the unit(s) to software companies, whether **AU** will be eligible for income-tax deduction in respect of the net profit generated from this sale?
- (B) In case **AU** leases out the unit(s) to software companies, whether **AU** will be eligible for the income-tax deduction in respect of the lease rent receivable under such-lease?
- (C) Whether, **AU** can sell or lease out the unit(s) to an organization, which may not go into software business? If yes, will **AU** be eligible for income-tax deduction?
- (D) As per para 6(f) of Industrial Park Scheme, 2002, no single unit shall occupy more than 50% of the allocable industrial area of an Industrial Park.
 - (i) Whether the aforesaid condition is complied with, if the entire area is allotted to three units?
 - (ii) Further, whether it is necessary to allot the various units in the Industrial Park to different parties or business entities?
- (E) What are the measures to be taken while selling the units to an investor, who in turn, leases out the property to a software company?
- (F) Whether, such investor as aforesaid, who leases out the unit(s) purchased from **AU**, to a software company, is eligible for the income-tax deduction in respect of the lease rent received?
- (G) How will **AU** monitor whether the units are being used for the business of software or allied activities? Is it necessary that **AU** should obtain any declaration or indemnity in this regard from the users / occupants of the Software Park?
- (H) The Industrial Park is being developed in three phases. **AU** has already sold certain units to investors, who, in turn, have leased out the units to software companies. Besides, **AU** has leased out certain units to some software companies and started receiving lease rent.

In the aforesaid circumstances, will **AU** be eligible for income-tax deduction in respect of the profit / income generated from the aforesaid sources. Whether tax benefit is available only after the completion of the entire project / scheme?
- (I) Any other point that needs to be covered, according to you.

AU is in the process of developing an Industrial Park, under Industrial Park Scheme, 2002. Under section 80-IA (4)(iii) of the Act, incentive is provided for the development of Industrial Park, in the form of a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years (AYs).

In order to answer the aforesaid queries, we may have to look into the relevant provisions of the IT Act, IT Rules, Industrial Park Scheme – 2002, Circulars of the Central Board of Direct Taxes (CBDT), other connected statutes and various legal precedents. The same are examined / discussed, as follows:

1. Relevant provisions of S.80-IA of the Income-Tax Act, 1961

For our purpose, provisions of S.80-IA(4)(iii) and S.80-IA(1), are quite relevant. The same are reproduced, as follows:

S. 80-IA (1) - Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of profits and gains derived from such business for ten consecutive assessment years.

S.80-IA (4) - This section applies to—

- (i)
- (ii)
- (iii) any undertaking which develops, develops and operates or maintains and operates an industrial park *or special economic zone* notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such industrial park to another undertaking (hereafter in this section referred to as the transferee undertaking) the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking;

From the aforesaid provisions, it may be seen that the aforesaid benefit is granted to an undertaking, which -

- develops,
- develops and operates, or
- maintains and operates

an Industrial Park, notified by the Central Government, in accordance with the relevant Scheme.

As per the proviso to S.80-IA(4)(iii), if an undertaking develops an Industrial Park, on or after 1.4.1999 and transfers the operation and maintenance of such Industrial Park to another undertaking, deduction under section 80-IA(1) shall be allowed to such transferee undertaking for the remaining period out of ten consecutive AYs.

It may be clearly understood here that the benefit of S.80-IA (4)(iii) is available to profits and gains from the activities of (i) development, (ii) development and operation, or (iii) maintenance and operation, of an Industrial Park. These provisions have nothing to do with the profits and gains of the business being carried on in the various units of the Industrial Park. It may also be stated here that the benefit U/S 80-IA(4)(iii) will be available in respect of the activities of development, development and operation or maintenance and operation of an Industrial Park or a combination of two or more of the aforesaid activities.

2. Provisions of Rule 18C of the Income-Tax Rules, 1962

The Rule 18C deals with the eligibility of Industrial Parks for benefits U/S 80-IA(4)(iii). The important conditions prescribed therein are, as follows:

- (i) The undertaking shall be duly approved by the Ministry of Commerce & Industry, in the Central Government, under the Scheme for Industrial Park, notified by that Ministry,
- (ii) The undertaking shall continue to fulfil the conditions envisaged in the scheme,
- (iii) On the aforesaid approval, the Central Board of Direct Taxes (CBDT) shall notify Industrial Parks for benefits U/S 80-IA.

3. Industrial Park Scheme, 2002

The Industrial Park Scheme, 2002, has been notified vide SO 354(E), dated 1.4.2002. The aforesaid scheme consists of nine paragraphs. In addition, there are two forms, viz. IPS-I in respect of application for setting up an Industrial Park and IPS-II, in which a report is to be sent to the Central Government, every year, during the period in which the benefits under the Act are availed of. We will examine the salient features of the Industrial Park Scheme, 2002, Form IPS-I and Form IPS-II, hereinafter.

I. Industrial Park Scheme, 2002 (IPS-2002)

This scheme is divided into nine paragraphs. The important features of the same are, as follows:

- (i) As per paragraph 2(c), “**common facilities**” include the facilities of air-conditioning, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power used by two or more industrial units in an Industrial Park;
- (ii) As per paragraph 2(f), “**infrastructure development**” includes, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on **commercial terms**.
- (iii) As per paragraph 2(h), “**undertaking**” means any undertaking, which is engaged in the business of developing, developing and operating or maintaining and operating an Industrial Park notified by the Central Government in accordance with this scheme.

(iv) **Objectives of the Industrial Park**

The objectives of the Industrial Park are stated in paragraph (4) and relevant part of the same is reproduced, as follows:

“Any project, being an Industrial Park, shall aim at setting up of –

- (a) or
- (b) an Industrial Park for development of infrastructural facilities or built-up space with common facilities in any area allotted or earmarked for the purposes of industrial use specified in the Explanation in para 6, sub-clause (c); or
- (c) ...

Provided that the scheme referred to in this clause is implemented by an undertaking and the Growth Centre is distinctly developed as a separate profit centre.

(v) **General conditions**

Paragraph (9) of the Scheme lays down a number of general conditions. The important ones of the same are, as follows:

- (a) **9(2)** - The tax benefits under the Act can be availed of only after the number of units indicated in the application, are **located** in the Industrial Park.

The aforesaid condition has to be clearly understood. In its application for approval under the IP Scheme, 2002, in the Annexure, **AU** has clearly stated “the Company is implementing the development of the total area admeasuring about 42,000 sq.metres, in **three-phases**”. In the light of this fact, the aforesaid condition may only mean that in the Plans approved by the Local Authority, viz. Pune Municipal Corporation, in this case, a clear provision must be there for the construction of requisite number of units.

- (b) **9(3)** - The undertaking applying for approval shall undertake to continue to operate the Industrial Model Town or Industrial Park or Growth Centre during the period in which the benefits under the Act are to be availed of.

As per paragraph 9(3), the undertaking applying for approval, shall continue to **operate** the Industrial Park.

- (c) **9(4)** – In a case where an undertaking develops an Industrial Park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such Industrial Park (i.e. transferor undertaking) to another undertaking (i.e. the transferee undertaking), the transferor and transferee shall **jointly intimate** to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi – 11, along with a copy of the agreement executed between the transferor and the transferee undertaking for the aforesaid transfer. Secretariat for Industrial Assistance shall on receipt of **each** such intimation issue a communication to the applicants of having taken the intimation on record.

As per paragraph 9(4), in a case where an undertaking develops an Industrial Park on or after 1.4.1999 and transfers the operation and maintenance of such Industrial Park, the transferor and the transferee shall jointly intimate to the concerned unit / section of the Ministry of Commerce & Industry, New Delhi, along with a copy of Agreement executed between them for the aforesaid transfer. The concerned unit / section shall, on receipt of **each such intimation**, issue a communication to the applicant of having taken the intimation on record.

In the aforesaid paragraph 9(4), the words “each such intimation” are important. They may mean that the aforesaid transfer for operation and maintenance of the Industrial Park may take place a number of times.

II. Form IPS-I

In respect of Form IPS-I, there are general instructions for the guidance of the applicants.

- (i) As per instruction No. 3(vi), in case of a project of Industrial Park, which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space shall not be less than 60% of the total project cost.

The aforesaid instruction indicates that the main job of the undertaking is to provide built-up space for industrial use.

- (ii) As per instruction No. 3(vii), “infrastructure development” means air-conditioning, roads, etc. and such other facilities as are for common use for industrial activity, which are identifiable and are provided on **commercial terms**.

- (iii) In this connection, one may also refer to a Note after para 4(X) of Form IPS-I, which is reproduced, as follows:

“The ‘Expected / Actual date of commencement of Industrial Model Town / Industrial Park , Growth Centre’ denotes the date when all the infrastructural facilities for the proposed number of industrial unit have been provided. If the Park is proposed to be developed in Phases, the detailed information on the same may be also suitably mentioned along with the application.”

The aforesaid Note clearly indicates that an Industrial Park may be developed in phases and the date of commencement of a particular phase of Industrial Park would be the date when all the infrastructural facilities for the proposed number of Industrial Units, under the relevant phase, have been provided.

III. Form IPS-II

Paragraph 7 of Form IPS-II reads, as follows:

“Indicate briefly the effective steps taken towards implementing, e.g. installation of common facilities, **No. of units sold or leased, Number of units commencing the industrial activity.** ”
(Emphasis added).

The aforesaid paragraph (7) of Form IPS –II, indicates that the units in Industrial Park may either be sold or leased by the undertaking. It also indicates that the various units in the Industrial Park may not normally commence industrial activity at the same time.

IV. Relevant parts of the application for approval of the Industrial Park and the approval order.

AU has made an application to Ministry of Commerce & Industry for the approval of Industrial Park under S.80-IA of the Act. There is a declaration in Form IPS-I, which is reproduced, as follows:

There is a declaration in Form IPS-I, which is reproduced, as follows:

“ I / We hereby undertake to continue to operate the Industrial Model Town / Industrial Park, during the period in which the benefits under sub-section 4(iii) of the section 80-IA of the Income-Tax Act, are to be availed.

I / We hereby certify that no single unit shall occupy more than fifty per cent of the allocable industrial area of an Industrial Model Town or Industrial Park or Growth Centre.

I / We hereby certify that the above statements are true and correct to the best of my / our knowledge and belief. ”

Besides, in the Approval issued by the Ministry of Commerce & Industry, the proposed activities are – **Data Processing, Software Development & Computer Consultancy Services.**

From the aforesaid parts of the application for the approval of the Industrial Park, it may be assumed–

- (i) **AU** will continue to provide all the requisite facilities required for the operation of the business of the units in Industrial Park. It, thus, means that the maintenance of Industrial Park will be taken care of by **AU** during the relevant period.
- (ii) In order to avail of the benefits U/S 80-IA(4)(iii), **AU** will have to ensure that during the relevant period, only the aforesaid business, viz. Data Processing, Software Development & Computer Consultancy Services - is carried on in all the units of the Industrial Park.

It, thus, becomes clear that in all the sale or lease agreements, **AU** will have to stipulate a condition that during the relevant period of ten consecutive AYs, only business of Data Processing, Software Development & Computer Consultancy Services, could be carried on. Besides, **AU** will also be required to ensure that the aforesaid condition is fully met / complied with.

4. Relevant Circulars of the CBDT

(i) The CBDT had issued Circular No. 763 dated 18.2.1998 in respect of the amendments vide the Finance Act, 1997. As per para 35.2, of the aforesaid Circular, the Finance Act, 1997 extends the tax-holiday to Industrial Parks notified for this purpose in accordance with any scheme to be framed by the Central Government. The tax-holiday is expected **to encourage investments in industrial infrastructure.**

(ii) The CBDT issued another Circular No.779 dated 14.9.1999, providing Explanatory Notes in respect of the amendments, vide Finance Act, 1999. Para 39.5-2 of the aforesaid Circular reads, as follows:

“39.5-2 The new provision contained in clause (iii) of sub-section (4) of restructured section 80-IA also provides that in the case of Industrial Parks, **the developer and operator or the developer or the operator**, may avail of the benefit in a similar manner. In case of Industrial Parks, if an undertaking develops it and transfers its maintenance and operation to another **to make management of such parks participatory**, the deduction for the remaining period of ten assessment years may thereafter be availed of by the transferee undertaking. This modified provision shall apply to Industrial Parks developed between 1.4.1999 to 31.3.2002.” (Emphasis provided)

From the aforesaid para 35.2 of Circular No.763 dated 18.2.1998, it is clear that the tax-holiday to Industrial Parks is granted in order **to encourage investments in industrial infrastructure.** It would mean that **any income** from the Industrial Park during the period of tax-holiday should get the benefit of deduction envisaged therein.

From para 39.5-2 of Circular No.779, dated 14.9.1999, it may be seen that in the case of Industrial Parks, **the developer and operator or the developer or the operator may avail of the benefit in a similar manner.** It may be understood here that the development of park would generate profits on sale of units. However, what kind of profits may be generated through the operation of the Industrial Park? The profits envisaged here could be only from the business of leasing the units, by the undertaking.

5. Meaning of the word “unit” in para (2)(i) of IPS-2002.

As per para 2(i) of IPS, 2002, “unit” means any separate and distinct entity for the purpose of one or more State or Central tax laws. The term “entity” is not defined in the IPS, 2002. As per Concise Oxford Dictionary, 9th Edition, “entity” means – a thing with distinct existence as opposed to a quality or relation. It gives an indication that an entity means a tangible item, which one can see and touch.

In this context, the various relevant provisions of IPS, 2002, Form IPS-I and Form IPS-II, are examined, as follows:

I. IPS, 2002

- (i) As per para 4(b) of IPS, 2002, objective of an Industrial Park is to develop and provide infrastructural facilities or built-up space with common facilities, etc.

As per para 4(a) of IPS, 2002, objective of an Industrial Model Town is to develop and provide plots or sheds and common facilities for carrying out integrated manufacturing activity, etc.

The meaning of the term “unit” for Industrial Park has to be interpreted *ejusdem generis* with the meaning of the term in para 4(a) of IPS, 2002, viz. plots and sheds.

Therefore, a unit in an Industrial Park has to be a part of a building, which could be dealt with independently under the State or Central laws, viz. for the purpose of stamp duty under the Stamp Duty Act and for the purpose of levy of capital gain under Income-Tax Act, 1961, etc. In other words, a unit has to be the something like a flat or shop where all the requisite amenities are provided.

- (ii) In para 6(b) of IPS, 2002, there is a requirement in respect of “minimum number of units to be provided in the Industrial Park”.

This again can lead to the same conclusion that unit has to be a part of the building, which could be independently used for industrial purpose.

Besides, a developer can only provide units like flats, shops, etc., to the prospective buyers and not business entities, by any stretch of imagination.

- (iii) As per para 6(e) of IPS, 2002, an Industrial Park provides built-up space for industrial use. This again means that the meaning of the term “unit” is a unit of a building.

- (iv) As per para 6(f), no single unit shall occupy more than 50% of the allocable area. This again leads to the same conclusion that a unit is a part of building providing built-up space for industrial use, independently.

II. Form IPS-I

As per para 3(viii) of General Instructions in respect of Form IPS-I, a ‘unit’ means a separate taxable entity. In this context, we may again make reference to the Stamp Duty Act, for the purpose of levy of stamp duty on the transfer of such unit and Income-Tax Act for the levy of capital gain, etc. Besides, it is also evident in this context that such a unit should be independently transferable from one owner to another.

In this context, it may also be stated that a unit as contemplated in IPS, 2002, has to be such which can independently be owned and purchased / sold. Therefore, it should be an independent unit under the Maharashtra Apartment Ownership Act, 1970 or the Maharashtra Co-operative Societies Act, 1960, etc. It may be further explained that a building unit may also be a part of a Condominium under the Maharashtra Apartment Ownership Act, 1970.

III. Form IPS-II

As per para 7 of Form IPS-II, information has to be furnished to the Ministry of Commerce & Industry in respect of “Number of units sold or leased”. Here again, the meaning of the term “unit” becomes very clear, viz. a building unit, which could be sold or leased out independently.

From the aforesaid discussion, it is quite clear that a “unit” as contemplated under IPS, 2002, is an independent built-up area which is transferable under the State law, like a flat or shop in a Co-operative Housing Society or in a Condominium formed under the Maharashtra Apartment Ownership Act, 1970.

6. The meanings of the term “develop”, “maintain” and “operate”.

If we look at the provisions of S.80-IA(4)(iii), it would be instantly gauged that in order to correctly understand the scope of the benefits provided U/S 80-IA(4)(iii), we will have to understand the meanings of the terms “develop”, “maintain” and “operate”. None of the aforesaid words, is defined either under or the IT Rules. For this purpose, we may look at the provisions of the **General Clauses Act, 1897**. This Act is the foundation of the interpretation of law and is of course, the Legislative Dictionary. This Act lays down some important rules regarding the interpretation of the statutes. In the Preamble of this Act, regarding “words not defined”, it has been stated that where the definition of the word has not been given, it must be construed in its **popular sense**, if it is a word of every day use. “**Popular sense**” means that sense which people conversant with the subject matter, with which the statute is dealing, would attribute to it. **The phrase “meaning of a word in popular sense”, is synonymous with the phrase “meaning of a word in common parlance”.**

In this respect, we may also look at the judgement of the Apex Court in the case of *State of Orissa Vs. Titaghur Mills Co. Ltd.*, AIR 1985 SC 1293. In this case, while dealing with “**meaning of words in common parlance**”, the Apex Court has laid down that an effort should be made to take aid of dictionaries to ascertain the meanings of a word in common parlance, but nevertheless to bear in mind to select a particular meaning, which is relevant to the context in which the Court has to interpret the word.

In the light of the aforesaid reasons, we will have to take the aid of dictionaries in order to understand the meanings of the words “develop”, “maintain” and “operate”, as used in S.80-IA(4)(iii) of the IT Act. We will, accordingly, look at the meanings of these words, as follows:

I. The meanings of the word “develop”

As per Concise Oxford Dictionary, 9th Edition, the word “develop” means - (a) to construct new buildings on land and (b) to convert land to a new purpose, so as to use its resources more fully.

From the aforesaid meaning, it is clear that any profit derived from the building and construction activity should get the benefit of S.80-IA (4)(iii). Besides, any profits from infrastructure development and provision of common facilities should also be covered U/S 80-IA (4)(iii).

It would thus mean that any profit made on the sale of units will be clearly entitled to the benefit of S. 80-IA(1), r.w. S.80-IA(4)(iii) of the Act.

II. The meanings of the word “maintain”

As per Concise Oxford Dictionary, 9th Edition, the word “maintain” means – **cause** to continue, preserve or provide for the preservation of building, machine, road, etc., in good repair. As per An English Reader’s Dictionary – Oxford, “maintain” means to keep in working order. From the aforesaid meanings of the word “maintain”, it would mean that the infrastructural facilities provided in the Industrial Park have to be kept in good repair and other common facilities have to be kept in working condition.

As per paragraph 2(h) of IPS-2002 and General Instruction No. 3(vii) of Form IPS-I, the aforesaid facilities are to be provided on **commercial terms**. It means that the undertaking may expect to make some profits out of the provision of aforesaid facilities for the units in the Industrial Park.

III. The meanings of the word “operate”

As per Concise Oxford Dictionary, 9th Edition, the word “operate” means - manage, work, control, put or keep in functional state.

As per Webster's Thesaurus, "operate" means – to manage, utilize, run, **exploit**.

As per Concise Oxford Dictionary, 9th Edition, the word "**exploit**" means – **to make use of** (a resource, etc.), **derive benefit from**.

From the aforesaid meanings, it may be concluded that the "operation" of Industrial Park, would definitely include leasing out the units thereof. Thus any income from leasing out the units in the Industrial Park, would get the benefit of S.80-IA(1), r.w. S.80-IA(4)(iii). This interpretation gets further support from para (7) of Form IPS-II, wherein the information regarding "**number of units sold or leased**", is required to be furnished.

7. Construction / Interpretation of an incentive provision, viz. S.80-IA(4)(iii)

As already pointed out, S.80-IA is an incentive provision granting tax benefit in respect of profits and gains derived by an undertaking or enterprise engaged in infrastructure development, etc. Besides, as stated in Board's Circular No. 763, the tax-holiday to Industrial Park is provided in order to encourage investments in industrial infrastructure. In addition, as per objectives of the Industrial Park, vide para (4) of IPS-2002, an Industrial Park is meant for development of infrastructural facilities or built-up space with common facilities in any area allotted or earmarked for the purposes of industrial use.

It is a well-settled position in law that an incentive provision in a taxing statute has to be liberally construed. In this connection, the following rules of interpretation are quite relevant.

(i) Incentive provision is to be liberally construed

For this purpose, reliance may be placed on the judgement of the Apex Court, in the case of *Bajaj Tempo Ltd. Vs. CIT* [1992] 196 ITR 188 (SC). This judgement deals with erstwhile S. 15C(2)(i) of the 1922 Act, which is akin to present S.80-IA. The relevant part of the head note on p.189 of the Report, is reproduced, as follows:

“ A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it.”

From the aforesaid judgement of the Apex Court, it is clear that an incentive provision should be construed liberally so as to advance the objectives of the provision.

(ii) Purposive construction - Intention

A purposive approach for interpreting the Act is necessary. The Courts must look to the object, which the statute seeks to achieve while interpreting any of the provisions of the Act. For this proposition, reliance may be placed on the following judgements:

- *S. Gopal Reddy Vs. State of Andhra Pradesh* JT 1996 (6) SC 268
- *K.P. Varghese Vs. ITO* [1981] 131 ITR 597 (SC)
- *Indian Hotel Co. Ltd. Vs. ITO* [2000] 245 ITR 538 (SC)

From the aforesaid judgements, it is clear that the provisions of taxing statute have to be construed in a manner that the objective / purpose of the enactment is really achieved.

(iii) Ambiguity is to be resolved in tax-payer's favour

The Supreme Court has held that ambiguity in interpretation has to be resolved in favour of the tax-payer. This was held by the Apex Court in the case of *CIT Vs. Kulu Valley Transport Co. Pvt. Ltd.* [1970] 77 ITR 518 (SC). Besides, the view that the benefit of doubt as to interpretation of law should go to the tax-payer is now well established, as held in the cases of –

- *CIT Vs. Madhav Prasad Jatia* [1976] 105 ITR 179 (SC)
- *CIT Vs. Vegetable Products Ltd.* [1973] 88 ITR 192 (SC)

(iv) An exemption clause may be liberally construed

As a general rule, exemption provisions have to be liberally construed so as to achieve the objective of such exemption. It was so held, in the cases of –

- *CIT Vs. Raja Binoi Kumar Sahas Roy* [1957] 32 ITR 466 (SC)
- *CBDT Vs. Aditya Vikram Birla* [1988] 170 ITR 137 (SC)
- *CIT Vs. UP Co-operative Federation Ltd.* [1989] 176 ITR 435 (SC)

From the aforesaid principles of interpretation of taxing statutes, as laid down by the Apex Court, it is evident that an incentive provision for the encouragement and growth of industrial activity should be liberally interpreted, in a manner that the purpose and objective of the enactment are achieved. Besides, if there is any ambiguity or doubt regarding the interpretation of a statute, the same should be resolved / decided in favour of the tax-payer.

8. Other provisions U/S 80-IA, required to be complied with.

There are a number of other provisions under sub-sections (5), (8), (9), (10), (11) and (12) of S.80-IA, which have to be complied with, by an undertaking claiming the benefit of deduction U/S 80-IA(1).

These provisions are summarized, as follows:

(i) S.80-IA(5) – Determination of quantum of deduction

S.80-IA(5) provides that for determining the quantum of deduction, the profits of the business shall be computed as if such business was the only source of income of the assessee during the assessment year. It means the profits of the Undertaking are to be computed separately.

(ii) S.80-IA(8) – Transfer of goods from other business to the eligible business

As per S.80-IA(8), in the case of transfer of goods to the eligible business by any other unit of the assessee, the transfer should be at the market rate prevailing on the date of transfer and the profits of the eligible business are to be computed as if the transfer has been made at the market value. There may be a tendency amongst the assesseees to transfer machinery or goods from the eligible business to other business of the assessee at inflated price with a view to increasing the profits of the eligible business in the year of transfer and derive higher deduction. S.80-IA (8), however, disallows any such move, for it requires determination of profits of the eligible business on the basis of the transfer being made at market value only.

Where, however, the Assessing Officer (A.O.) feels any exceptional difficulties, he may compute such profits on a reasonable basis.

(iii) S.80-IA(9) - No deduction under any other section

As per S.80-IA(9), the amount of profits which is claimed as deduction under S.80-IA shall not be eligible for any other deduction for any A.Y. under any other provisions of Chapter VI-A under the heading “C – Deduction in respect of certain incomes”.

(iv) S.80-IA(10) – The A.O. is empowered to compute profits of eligible business on his own.

As per S.80-IA(10), the A.O. is empowered to compute reasonable profits of the eligible business, if it appears that the assessee has arranged his business to reflect more than ordinary profits, which might be expected to arise in such eligible business.

(v) **S.80-IA(11) – The Central Government reserving power to disallow deduction to any class of industrial Undertakings.**

As per S.80-IA(11), the Central Government has been empowered to issue notification for non-applicability of this deduction to any class of industrial undertakings or enterprises with effect from the date specified in the notification.

(vi) **S.80-IA(12) – Application of provisions in case of transfer of an Undertaking in a scheme of amalgamation or de-merger.**

As per S.80-IA(12), the scheme of amalgamation or demerger shall confer the benefit of the deduction on the amalgamated or the resulting Company.

9. Restrictions regarding the use of the units in the Industrial Park

In order to avail of the benefit of deduction U/S 80-IA(1), the undertaking in question, viz. **AU**, will be required to comply with the following conditions, during the period of relevant ten consecutive AYs.

- (i) **AU** will provide and maintain the requisite infrastructural and common facilities for the units in the Industrial Park.
- (ii) **AU** will be required to continue to operate the Industrial Park, during the aforesaid period.
- (iii) **AU** will have to ensure that during the aforesaid period, only the business of Data Processing, Software Development & Computer Consultancy Services, is carried on in the units. For this purpose, **AU** will have to incorporate the aforesaid stipulation / condition in the Sale Deeds of the units to be sold.

Thus there will be restrictions placed on the buyer(s) of the unit(s) during the aforesaid period, as far as the use of the unit(s) is concerned. In other words, during the aforesaid period, the unit(s) can be leased out only for the purpose of the aforesaid business.

- (iv) If **AU** leases out some of the units, then also the use of the unit has to be restricted for the purpose of the aforesaid business, during the aforesaid period.

In this context, one point which is very material and important is that a buyer of unit(s) in the Industrial Park will be under certain restrictive conditions, in as much as he could lease out the unit(s) only for the purpose of the business of Data Processing, Software Development & Computer Consultancy Services.

10. Analysis of the provisions of S.80-IA(4)(iii)

The provisions of S.80-IA(4)(iii) may now be analysed, in the light of the aforesaid provisions of the IT Act, IT Rules, Industrial Park Scheme-2002, Circulars of the CBDT and judgements of the Apex Court.

As already explained, the benefit of deduction U/S 80-IA(1) is available to any undertaking, which -

- develops,
- develops and operates, or
- maintains and operates

an Industrial Park, notified by the Central Government, in accordance with the Scheme framed and notified by that Government.

The objective of the aforesaid provision is to develop infrastructure facilities or built-up space with common facilities for the purpose of industrial use of the units in the Industrial Park.

The aforesaid provisions are analysed, as follows:

- I. The meaning of the term “develop”, as already explained is - (a) to construct new buildings on land and (b) to convert land to a new purpose, so as to use its resources more fully. Thus, the undertaking may earn profits on sale of the units. The sale consideration will also include the proportionate price of infrastructural and common facilities. Sale of units is also contemplated in para (7) of Form IPS-II.

Thus, any profits and gains derived by the undertaking on the sale of units in the Industrial Park will be entitled to the benefit of deduction U/S 80-IA(1).

- II. Next, we have to analyse the meaning of the expression “develops and operates”. The meaning of the term “develop” has already been explained. Regarding the term “operate”, it means to manage, utilize, run, **exploit**. The word “exploit” means to make use of (a resource etc.), derive benefit from. Thus, an undertaking after constructing the units, may lease them out and income from the business of leasing such units will also be entitled to the benefit of deduction U/S 80-IA(1).

This view is supported by para (7) of Form IPS-II, wherein leasing of the units is also contemplated.

III. The next expression is “maintains and operates”. The meaning of the term “maintain” is to keep in working condition. As already explained, AU has undertaken to provide infrastructural and other common facilities and will continue to maintain the same, during the relevant period of ten consecutive AYs.

Thus, the responsibility for maintenance is already fixed, as AU has to take care of the same. Then what remains is only “operate”. Therefore, the word “operate” has to be separately and independently considered. In this context, we may also refer to para 39.2 of Circular No.779 dated 14.9.1999 of the CBDT. As per this Circular, in case of Industrial Park, **the developer & operator** or the developer or the operator may avail of the benefit in a similar manner. The Circular further states in case of Industrial Park if an undertaking develops it and transfers its maintenance and operation to another undertaking to make management of such parks participatory, the deduction for the remaining period of ten assessment years may thereafter be availed of by the transferee undertaking.

From the aforesaid Circular, one may safely conclude that the scheme of the Industrial Park may be run, as follows:

- (i) The provision and maintenance of infrastructural and other common facilities is to be done by the undertaking.
- (ii) The undertaking may sell some units and the profits derived therefrom, will be entitled to the benefit of deduction U/S 80-IA(1).
- (iii) The undertaking may lease out some units and the income from the leasing business will also be entitled to the benefit of deduction U/S 80-IA(1).
- (iv) Now, we come to the difficult question, as to what happens to the leasing income of a person who has bought unit(s) in the Industrial Park from the undertaking and thereafter leased them out to other parties for running the aforesaid business.

In this context, it should be clearly borne in mind that the purpose and objective of the Industrial Park Scheme is to see that infrastructural and other common facilities are provided for industrial use and for that purpose, an incentive is provided by way of 100% deduction in respect of profits and gains derived from the development, development and operation or operation of the Industrial Park, by the undertaking.

As far as a buyer of unit(s) in the Industrial Park is concerned, he does not play any role in the maintenance and operation of Industrial Park. He may either run his own business in such unit(s) or lease out such unit(s) to other parties. If he leases out the units to other parties, he would be a pure & simple investor, who has no role, whatsoever, to play in the maintenance and operation of the Industrial Park. Therefore, his income from leasing activity will not be entitled to the benefit of deduction U/S 80-IA.

- (v) Now, we may also look at another scenario, where the undertaking leases out some units and after a period of say four or five years, sells some of them or all of them. In such a situation, the undertaking will get the benefit of deduction U/S 80-IA(1), / in respect of leasing income and also profits derived from the sale of such units.
- (vi) There may be another situation where another undertaking has taken over the maintenance and operation of the Industrial Park and has also bought some units from the original undertaking. If such units are leased out, then income from the business of leasing will be entitled to the benefit of deduction U/S 80-IA(1). Besides, there may also be income from the provision of infrastructural and other common facilities to the units of the Industrial Park, as the same are to be provided on commercial terms. Such income will also be entitled to the benefit of deduction U/S 80-IA(1).

11. Conclusion

In the light of discussion in the aforesaid paras, the various queries raised by **AU** are answered, as follows:

- (A) The profit generated from the sale of unit(s) to software companies, will be eligible for the benefit of hundred per cent deduction U/S 80-IA(1).
- (B) **AU** will be entitled to the benefit of hundred per cent deduction U/S 80-IA (1) in respect of lease rent, receivable from software companies to whom the units in the Industrial Park, are leased out.
- (C) Under the Industrial Park Scheme, **AU** cannot sell or lease out unit(s) to an organization, which would not run the business specified in the Government Approval. Such restriction is applicable only for the relevant period of ten consecutive AYs.
- (D) As per para 6(f) of the IPS-2002, no single unit shall occupy more than 50% of the allocable industrial area of the Industrial Park.

- (i) The aforesaid condition will stand complied with, if the total area of an Industrial Park is allotted to three units, provided no single unit occupies more than 50% of the total allocable area of the Industrial Park.
- (ii) No. It is not necessary to allot the various units in the Industrial Park to different parties or business entities.
- (E) While selling the units to an investor, **AU** will have to incorporate a condition in the Sale Deed that the unit(s) concerned will be utilized only for software business during the relevant period of ten consecutive AYs.
- In case of non-compliance with the aforesaid condition, stiff penalties or other serious consequences, may also be required to be incorporated in the Sale Deed.
- (F) As already explained, an investor who purchases unit(s) in the Industrial Park and leases them out to software companies, will not be eligible to the benefit of deduction U/S 80-IA(1) in respect of the lease rent.
- (G) In my opinion, **AU** may monitor the appropriate use of the units by incorporating the necessary condition in the Sale Deed or in the Lease Deed. Besides, **AU** may also think of obtaining a Promissory Declaration or getting an Indemnity Bond executed, in order to ensure the appropriate use of the unit(s).
- (H) As per para 9(2) of the IPS-2002, tax benefit under the Act can be availed of only after the number of units indicated in the application are **located** in the Industrial Park. As per Webster's New World Dictionary, the meaning of the term "locate" means – (a) to designate the site of, (b) to show the position of (on a map, etc.), (c) to assign to a particular place. In the given context, it can only mean that the site for all the units should be properly designated in the building-plan approved by the local authority, viz. Pune Municipal Corporation, in this case. Thus, it may be concluded that at least the building plan for the construction of all units in the Industrial Park should be got approved from the Pune Municipal Corporation, before availing of the deduction U/S 80-IA (1).

In this context, one may also refer to a Note after para 4(X) of Form IPS-I, which is, as follows:
 "The 'Expected / Actual date of commencement of Industrial Model Town / Industrial Park, Growth Centre' denotes the date when all the infrastructural facilities for the proposed number of industrial unit have been provided. If the Park is proposed to be developed in Phases, the detailed information on the same may be also suitably mentioned along with the application."

The aforesaid Note clearly indicates that an Industrial Park may be developed in phases and the date of commencement of a particular phase of Industrial Park would be the date when all the infrastructural facilities for the proposed number of Industrial Units, under the relevant phase, have been provided.

Besides, **AU**, in its application for approval of the Scheme, has clearly stated in the Annexure to the application that the Company would be implementing the development of the total area in **three-phases**. The Scheme has been approved with the aforesaid declaration that the Scheme will be implemented in three-phases. It supports the view that in order to avail of the benefit of the Scheme, it is not necessary that all the units are constructed / completed at the same time.

In view of the aforesaid discussion, the tax benefits under the Act shall be availed of after all the infrastructure facilities for the proposed number of units under the relevant phase have been provided.

In this context, it may however, be kept in mind that the relevant period of ten consecutive AYs will be reckoned from the year in which the benefit of the Scheme is availed of for the first time.

Therefore, **AU** would be entitled to the benefit of the Scheme in respect of sale or lease of units, already constructed.

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